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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,573	08/01/2003	Surinder K. Bains	340.176	5019

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EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,573

Applicant(s)

BAINS ET AL.

Examiner

Krisanne Jastrzab

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 23 has been amended to require disinfection of *Staphylococcus aureus* within 30 seconds, however, the original disclosure fails to support such a time limitation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. The preamble of the claim recites a hypochlorite disinfecting wipe, however, the preamble merely followed by an improperly stated intended use. The claim is further found to be vague and indefinite because it improperly employs the relative term of degree "improved".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5, 9-16 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guthrie et al., WO 01/92633 A1 in view of Lister U.S. patent No. 5,087,450 and Win et al., U.S. patent No. 4,833,033.

Guthrie teaches a wiping device for treating surfaces with fluids such as disinfectants. The wiping device includes an absorbent core coupled to a thermoplastic sheet and having an impervious backsheet. The absorbent core can be impregnated with the fluid to be used for treating the surface and the entire wipe can be provided in a protective containment system. A

preferred material for the absorbent core can be an air-laid nonwoven felt and the combination of the fluids and core is preferably effective over a wide range of temperatures to prevent premature release of the fluid. See the abstract, page 2, lines 18-29, page 3, lines 23-29, page 4, lines 1-5, page 5, lines 23-29, page 6, lines 7-30, page 7, lines 17-22 and page 9, lines 5-11.

Lister teaches the use of an aqueous sodium hypochlorite as the disinfectant impregnating a wipe for application to a variety of surfaces, because the sodium hypochlorite is effective in disinfecting and destroying the HIV virus as well as herpes and hepatitis, and can be successfully included in the wipe form to provide treatment means in hospitals, doctor's offices, and clinics as well as rest rooms and private homes. The wipe can include a hand attachment or a glove attachment for implementation. See column 1, lines 64-68, column 2, lines 1-30 and 55-68, column 3, and column 4, lines 1-6.

Win et al., teach the use of a microfiber material for use as the absorbent material for a wet wipe that prevents evaporation losses for at least 30 days at elevated temperatures. The microfiber material provides the benefit of being an effective medium for a disinfecting wet wipe with the ability to maintain a constant, equal, treating fluid concentration throughout a stack of such wipes. See the abstract, column 3, lines 26-57, column 4, lines 1-5, column 5, lines 9-62 and claim 1.

It would have been well within the purview of one of ordinary skill in the art to utilize sodium hypochlorite for the treating agent in the wipe of Guthrie because of its recognized efficacy both in wipe applications and for destroying viruses such as HIV and herpes as taught in Lister. It would further have been obvious to one of ordinary skill in the art to form the wipe with an absorbent core of the microfiber material taught in Win et al., because it would provide

extended protection from evaporative losses while maintaining a consistent treatment concentration.

With respect to claims 5 and 16, Lister clearly teaches the use of the wipe in conjunction with a cleaning element, namely a hand attachment or glove attachment.

Claims 6-8 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guthrie together with Lister and Win et al., as applied to claims 1-5, 9-16 and 20-23 above, and further in view of Serego Allighieri et al., WO 99/52360.

Serego Allighieri et al., teach the known and expected provision of a buffering system in an aqueous disinfecting solution impregnating a wipe applicator for maintaining an appropriate pH in the range of 7-12, of the disinfecting solution. See page 4, page 7, page 11, page 20 and page 22.

It would have been obvious to one of ordinary skill in the art to include any known buffers in the disinfecting solution of the combination above, such as those taught in Serego Allighieri et al., because it would provide effective maintenance of a pH appropriate for the disinfecting application and compatible therewith.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 10/870,093. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are of the same inventive concept, namely the provision of a wipe containing an aqueous hypohalite disinfecting composition with an absorbent carrier, and a protective packaging system. '093 does not require the instantly claimed stability of the hypohalite, however the structure and function claimed are the same and thus the instantly claimed stability would be intrinsic to the claimed subject matter of '093.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments filed 3/17/2005 have been fully considered but they are not persuasive. Applicant argues that the references of record, particularly Win, fail to teach or suggest achieving the chemical stability required by the instant claims, but merely teach enhanced stability against evaporation. The Examiner would point out that the claims do not require any sort of chemical stability that exceeds that of preventing evaporation of the hypochlorite to maintain its activity. She would further assert that the prior art of record clearly meets the claimed limitation and are properly combined.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Krisanne Jastrzab
Primary Examiner
Art Unit 1744

May 25, 2005